

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH M. MAUER, Individually and as
Personal Representative of the Estate of
KRISTIANA LEIGH MAUER, MINDE M.
MAUER, CARL MAUER, and CORY MAUER,

Plaintiffs-Appellees,

v

ROBERT WAYNE TOPPING,

Defendant,

and

MANISTEE COUNTY ROAD COMMISSION,

Defendant-Appellant.

UNPUBLISHED

April 7, 2005

No. 250858

Manistee Circuit Court

LC No. 02-010971-NI

Before: Saad, P.J., and Smolenski and Cooper, JJ.

SAAD, P.J. (*dissenting*):

I respectfully dissent.

In *Haliw v Sterling Heights*, 464 Mich 297, 306-308; 627 NW2d 581 (2001), the Michigan Supreme Court made it clear that plaintiff must show that it was the combination of ice and a defect in the road that caused the accident. That is, plaintiff must show that there was a persistent defect in the road rendering it unsafe for public travel at all times, that in combination with the ice, caused the accident. Here, there is no showing that the alleged defect rendered the roadbed unsafe for travel at all times. Indeed, it is not clear that plaintiff made the allegation that there was a "persistent defect" that rendered the road unsafe for public travel "at all times." If the majority were to hold that this matter should be remanded to the trial court to determine this dispositive issue, then I would agree with a remand. However, by simply affirming the trial court, the majority instead misapprehends the holding in *Haliw* and remands this matter under the cloud of this misapprehension which will only unduly prolong and complicate this litigation. Accordingly, I dissent.

/s/ Henry William Saad

